UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/51
28 January 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Sale of children

Report submitted by Mr. Vitit Muntarbhorn,
Special Rapporteur appointed in accordance
with resolution 1990/68 of the Commission
on Human Rights

GE.91-10199/2795B

CONTENTS

	Paragraphs	Page
Introduction	1 - 6	1
I. CONSIDERATIONS OF A GENERAL NATURE	7 - 14	3
II. SALE OF CHILDREN	15 - 25	5
A. Adoption	15 - 16	5
B. Child labour	17 - 22	6
C. Organ transplantation	23 - 25	7
III. CHILD PROSTITUTION	26 - 29	8
IV. CHILD PORNOGRAPHY	30 - 32	9
V. CAUSATION	33 - 37	10
VI. INTERNATIONAL SCENARIO AND NATIONAL CONTEXT	38 - 52	11
A. International scenario	38 - 46	11
B. National context	47 - 52	12
VII. CONSIDERATIONS WITH REGARD TO ACTION	53 - 57	15
VIII. CONCLUSIONS AND RECOMMENDATIONS	58 - 71	17

Introduction

1. At its forty-first session, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities adopted resolution 1989/42, entitled "Sale of children", by which it referred to the Commission on Human Rights for its attention, action or consideration, draft resolution XII.

2. At its forty-sixth session, the Commission on Human Rights adopted draft resolution XII recommended by the Sub-Commission for adoption by the Commission (resolution 1990/68). By this resolution, the Commission on Human Rights:

> "1. Decides to appoint for a period of one year a Special Rapporteur to consider matters relating to the sale of children, child prostitution and child pornography, including the problem of the adoption of children for commercial purposes;
>
> 2. Requests the Chairman of the Commission, following consultations with the other members of the Bureau, to appoint as Special Rapporteur a person of international reputation;
>
> 3. Invites the Special Rapporteur to take account, in fulfilling his mandate, of the need to be in a position to use any credible and reliable information made available to him, to request the Governments concerned to state their views and comment on any information he intends to include in his report and to carry out his task with discretion and independence;
>
> 4. Requests the Secretary-General to urge all Governments to co-operate closely with the Special Rapporteur and to offer their co-operation and assistance so that he may fulfil his mandate effectively;
>
> ...
>
> 6. Requests the Special Rapporteur to submit a comprehensive report to the Commission at its forty-seventh session on his activities relating to these matters, including the frequency and extent of such practices, as well as his conclusions and recommendations."

3. The Economic and Social Council endorsed Commission resolution 1990/68 by decision 1990/240 in which it also extended the period of the mandate of the Special Rapporteur to two years.

4. Pursuant to the above-mentioned resolution and decision, the Chairperson of the forty-sixth session of the Commission on Human Rights, after consultation with the members of the Bureau, appointed, on 10 September 1990, Mr. Vitit Muntarbhorn (Thailand) as Special Rapporteur.

5. On 14 November 1990, the Secretary-General sent a note verbale to all Governments and with reference to Commission resolution 1990/68 enclosed a letter by the Special Rapporteur in which he asked for assistance in the performance of his mandate as well as for pertinent information. A similar request was addressed to non-governmental organizations. In addition, the

Special Rapporteur has established contact with the members of the Sub-Commission and in particular the Chairman of the Working Group on Contemporary Forms of Slavery as well as with relevant specialized agencies.

6. Given the short period of time which has elapsed since his appointment this report aims to provide a preliminary assessment of some of the key problems and prospects concerning the topic. It is not intended to be a detailed report, as the latter is not due until the end of 1991. It is hoped, however, that the observations made in the present report will raise comments and invite responses and assistance which will ultimately contribute to the preparation of the next report.

I. CONSIDERATIONS OF A GENERAL NATURE

7. The sale of children is a universal phenomenon, although the extent varies from country to country. Its transnationalism has been aggravated by the advent of unabashed consumerism, modern technology and rapid communications. Child exploitation is tragically not merely the "business" of certain individuals; there is also an international system based upon criminal elements which profiteers therefrom. Ironically, it is not only the problem of the child whose life and integrity are at stake; it is equally the problem of the parents and the family whose needs give rise to the abuses committed against the child. The strategies required to combat this issue thus need to be multi-faceted and comprehensive.

8. Perhaps the first challenge to be noted is that of definition. The word "child" itself gives rise to different age criteria in national systems. At the international level, the 1990 United Nations Convention on the Rights of the Child takes as the threshold the age of 18; by article 1 it is stated that "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". However, particularly in regard to the issue of child labour, the Convention does not stipulate 18 as the minimum age for employment, and a cross reference is necessary to the international standard established by the International Labour Organisation (ILO) to identify the age concerned. By ILO Convention No. 138, the minimum age is 15, with possible reduction to 14 in developing countries. At the national level, especially in countries which have not acceded to this Convention, the age range is not uniform. This is but one of the many examples concerning the leeway surrounding the age criterion.

9. Equally taxing is the notion of "sale". Anyone who has studied law in the major legal systems of the world can probably identify differences in approach concerning the rise and fall of commercial contracts. Contractual obligations arise differently in common law and civil law systems. The difficulty is further highlighted by the question posed by a non-governmental organization as to whether the sale merely concerns a child sold by one person to another (the buyer) like a consumer article or whether it also covers: (a) a child transferred to another person in exchange for a sum of money or other considerations which do not constitute the price of the child but which nevertheless represent unjustified profits (e.g. bribes); (b) where the child is rented to another person, for example, for the purpose of sexual exploitation or exploitation of his labour when the sum paid is completely disproportionate to the work the child has to do; (c) the situation in which a child is held till the parent or guardian is in a position to meet a financial obligation (see E/CN.4/Sub.2/AC.2/1989/8/Add.1, page 2).

10. In the opinion of this author, we should not be too legalistic in analysing what constitutes a sale. The key is the exploitation of the child, which usually entails the action of another benefiting from the child in violation of his/her rights.

11. What exemplifies the sale of children? Here again there is room for divergence of interpretation. According to one United Nations document, there is a reference to three situations: the sale for adoption; the sale for forced labour; and the sale for prostitution (E/CN.4/Sub.2/1987/28, page 6). Another non-governmental organization (International Abolitionist Federation, Report to the Working Group on Slavery, 1989, page 2) takes a

broader perspective by identifying the following: (a) the sale of children for adoption and marriage; (b) the sale of children for prostitution and sex exploitation; (c) the sale of children for pornography; (d) the sale of children for cheap and bonded labour; (e) the sale for begging, stealing and other criminal actions; (f) the sale of children for organ transplantation.

12. At the international seminar on child labour and trafficking and the sale of children held in Siracusa in September 1990 (organized by Defence for Children International (DCI) and the International Commission of Jurists (ICJ)), the working group on trafficking and sale of children concentrated mainly on inter-country adoptions, while that on child labour identified twelve categories of child labour, namely: armed conflicts; adult criminal activities; forced labour of abducted children; debt bondage; labour in the unorganized sector; labour in the organized sector; child prostitution, pornography and sexual exploitation; forced marriages; disabled children in the labour force; domestic labour; apprenticeships; and family supervised labour.

13. Clearly there is room for a broad or narrow interpretation of the notion. Moreover, while there is substantial overlap between the "sale of children", "child prostitution" and "child pornography", the first element is wider and may cover more categories, e.g. adoption and the trade in organs.

14. The task of the Special Rapporteur is somewhat daunting in that in view of the limited time available to do the basic research, it will not be possible to cover all the examples cited in detail in the projected report. Tentatively, it is suggested that the report concentrate on the question of adoption, aspects of child labour (particularly bonded labour), child prostitution and child pornography, and organ transplantation (in view of the recent World Health Organization (WHO) initiative on this issue). The perspectives would have to vary from the national to multilateral levels, and would complement article 35 of the Convention on the Rights of the Child in its stipulation that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

II. SALE OF CHILDREN

A. Adoption

15. Many municipal systems have catered to the adoption of children for decades so as to facilitate the transfer of children from their biological parents to the adoptive parents. Traditionally, this was one method of finding a substitute home for the child where the original parents were unable or unwilling to care for the child. However, particularly from the 1950s when the adoption of war orphans from Asia became popular, there arose the threat of commercialism between different countries, particularly the flow of children from Asia and South America to Europe and North America. As the report of the Siracusa seminar observes:

> "All this has led to a structural 'demand' for children in the industrialized world and an equally structural 'supply' of children in the developing countries, and to the search for candidates for adoption from the developing world. To a certain extent, the field has become commercialized, lending itself to various abuses. Adoption agencies linked with the business sector in some countries have mushroomed with the sole aim of faciliating inter-country adoption based upon programmes for cash purpose. They tend to neglect the root causes of the adoption itself which may arise from poverty and abandonment in the country of origin; they may merely service the demand factor in the adoptive country.
>
> ...
>
> What is new is the link between trafficking and sale with the practice of adoption of children in their own countries, and above all, in inter-country adoption. The channels for inter-country adoption are at times clandestine and illegal. There is also a grey area where a seemingly legal entry of a child into a country where the child is adopted is obscured by malpractices or dubious practices in the country of origin. This is aggravated by independent or private adoptions whereby prospective adoptive parents bypass officially recognized authorities and act through their own means." (report of the International Seminar on the Implementation of the Convention on the Rights of the Child With Special Reference to the Exploitation of Child Labour, Bonded Labour and Trafficking and Sale of Children, 1990, DCI/ICJ, pages 15 to 16).

16. Precisely because of the possibility of abuse, safeguards are required to protect the child. The exhortation is provided by article 21 of the Convention on the Rights of the Child, requiring authorization of adoption by competent authorities, exploration of adoption in the home country before inter-country adoption ("subsidiarity"), and action against "improper financial gain". Moreover, measures concerning the root causes, such as poverty affecting the original parents, need attention. These factors parallel the work of the Hague Conference on Private International Law which is now drafting a new international convention on inter-country adoptions.

B. Child labour

17. There is much literature on the question of child labour, particularly through the efforts of the ILO, Governments and non-governmental organizations. The phenomenon is vast, and there is a continual conflict concerning the "guesstimates" of the numbers involved. The United Nations has been assisted by a seminal report by A. Boudhiba on the exploitation of child labour submitted in 1982 (E/CN.4/Sub.2/479).

18. As noted above, the categories of child labour are numerous, and one of the tasks of the report to be submitted at the end of 1991 will be to undertake the challenge of analysis realistically.

19. An evident shortcoming in this field is the ubiquitous presence of legislation, especially the presumption that laws per se will eradicate the exploitation of child labour. A host of laws exist both at the international and national levels, fluctuating between the need to abolish child labour and the need to regulate it. Both approaches have been hampered by the fact that law enforcement is poor, while the exploitative situations usually take place in the informal sector which is relatively invisible and beyond the law. As observed by an ILO publication:

> "The legal approach has proved to be inadequate to the problems of South America, and in recent years it has been rendered almost impotent in the face of massive poverty. Some have even questioned how rigorously the law should be enforced; in the absence of full employment, realistic minimum wages and adequate social welfare programmes the prohibition of child work might serve only to augment the misery of many millions of families." (A. Bequele and J. Boyden (eds.), Combating Child Labour, ILO, 1988, page 125).

20. While one can sympathize with that point of view, the law is necessary in this field. However, it should not be posited in a vacuum; it requires a whole variety of social, economic, political and budgetary interventions to bolster the law as a means to an end and not an end in itself.

21. Until now this has proved to be an underlying weakness; the interventions have been almost too little and too late. Does it suffice to stipulate a minimum age for child labour when the family is pushing the child out to work? What social welfare or subsidy is there for the parents to avoid sending the child to work and to encourage him/her to go to school? How attractive is schooling to the child or the parents when there is little to eat at home? One wonders also how and if the private sector has been catalysed to help exert peer group pressure on members of that sector to prevent abuses. Have links been established sufficiently with the potential abusers to prevent abuses, whether by means of "carrots" or "sticks"?

22. While virtually all systems have laws on child labour, many sytems still do not have laws providing social welfare and subsidies for the families and for the children. While the laws seek to punish transgressors, they seem to forget that incentives may also be required to orientate employers away from the use of child labour. A law "wishing away" child labour may indeed prove to be little more than wishful thinking. What is needed is an inter-disciplinary approach linking law, policies, and practices with

appropriate budgetary commitment and the relevant catalysts (families, children, employers, State organs and non-governmental organizations) for sustained interventions.

C. Organ transplantation

23. Perhaps the most insidious issue to appear on the international scene in recent years is the question of organ transplants affecting children. Are children being sold for this purpose? The rumours abound, and the denials are equally abundant. A 1990 report of the World Health Organization notes as follows:

> "A feature of organ transplantation since its commencement has been the shortage of available organs. Supply has never satisfied demand, and this has led to the continuous development in many countries of procedures and systems to increase supply. Rational argument can be made to the effect that shortage has led to the rise of commercial traffic in human organs, particularly from living donors who are unrelated to recipients. There is clear evidence of such traffic in recent years, and fears have arisen of the possibility of related traffic in human beings." (Human Organ Transplantation, ED 87/12, 19 November 1990, World Health Organization, page 4).

24. Whatever the facts of the case, it is submitted that safeguards are required to protect children from such threat. In this regard it is interesting to note that the World Health Organization has taken up the issue concretely. It is currently drafting a set of guiding principles on human organ transplantation which have direct import on children, including the following:

> "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues."
>
> "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited."
>
> "It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered." (Human Organ Transplantation, supra., pages 4-5).

25. Whatever the merits of these guidelines, much will depend upon the types of laws, policies and interventions at the local and transnational levels to prevent abuses and identify the culprits. Here again, if the root causes are linked with family needs and social disparities, a purely legalistic approach will not suffice, and a more comprehensive set of strategies is required.

III. CHILD PROSTITUTION

26. Child prostitution is a global phenomenon. It is particularly evident in the developing world, partly due to the pervasive deprivations which induce parents to sell their children and/or drive children into the trade. It manifests itself in a variety of forms. As identified by one commentator, (H.W.J. Breys, Report on the Sexual Exploitation of Children and Young Persons, Council of Europe, 1989, pages 12-13) it is linked with serfdom, debt bondage, forced marriages, sale of children, sex tourism and streetchildren. Children may be led into prostitution because they are "runaways, walkaways or throwaways." In the case of girl prostitutes, there may be elements of gender discrimination leading them into this profession, compounded by certain cultural practices, such as elevating girls from a young age to the status of "sex goddesses". The problem has been aggravated by sex tourism, and led to a greater number of paedophiles and of boy prostitutes. Prostitution itself is only one step away from other tragic enticements such as drugs and pornography.

27. While there may be room for debate as to whether to legalize adult prostitution, it is submitted that this is out of the question in the case of the child: children should not become prostitutes for any reason as this is detrimental to their health, and it is in breach of their rights. The advent of AIDS and the rise in the number of children affected adds another urgent call of distress.

28. There is a wide variety of national and international laws on the subject. The most recent is the Convention on the Rights of the Child whose article 34 stipulates that:

> "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> ...
>
> (b) The exploitative use of children in prostitution or other unlawful sexual practices."

29. Again the quandary is to what extent the laws are effective in preventing or remedying child prostitution. The challenge is similar to that posed in the context of child labour, of which child prostitution can be considered to be a part: the law alone prohibiting, abolishing or regulating the problem does not suffice. Other interventions of a broader nature are required not only for the girls and boys in the trade but also their families. Appropriate educational opportunities, occupational alternatives, and social subsidies are likewise needed as part of those interventions.

IV. CHILD PORNOGRAPHY

30. One commentator has defined this as comprising "any visual or audio material which uses children in a sexual context." (Report on the Sexual Exploitation of Children and Young Persons, supra., page 17). The United States customs service offers this explanation: "a visual depiction of anyone under the age of 18 engaged in explicit sexual conduct, real or simulated, or the lewd exhibition of the genitals."

31. Again while there may be some debate as to the extent to which adult pornography should be prohibited, no such margin of discretion is appropriate for child pornography: children should not become its victims, especially as the damage incurred is both physical and psychological. The setting has become more complicated due to the advance of technology and the availability of video equipment which can rapidly augment the transnational production and dissemination of pornography. From another angle, there is little information on the psychological make-up of the customers which, if proven, would influence the rehabilitation process.

32. Evidently there is a range of laws which exist to prohibit and/or control the production and sale of pornography, although they tend not to punish the mere possession thereof. The Convention on the Rights of the Child covers the issue in article 34 (c) by which States Parties undertake to prevent the exploitative use of children in pornographic performances and materials. While some countries have laws specifically on child pornography, others do not. In effect, the general provisions of the national criminal law can usually be extended to prohibit child pornography, if there is sufficient political and legal "will". Yet, there arises the question concerning the efficacy of these laws. The issue of other interventions beyond the law arises again, reflecting the perspective already expressed.

V. CAUSATION

33. One of the concerns pervading all the sections above is causation. Without identifying the root causes, how can one truly prepare a comprehensive strategy to prevent the problems from arising? There is an addititional caveat in that much of the existing legislation purports to provide remedies rather than deal with the root causes.

34. Some of the causes of child exploitation are well-known. Poverty emerges as a common thread. However, there is more to it than meets the eye. The fragmentation of the family, compounded by migration, break-up and breakdown, exerts an inordinate pressure on the children. Child abuse may arise; it is well established that many child prostitutes come from such a background. Gender discrimination is also visible, leading to disadvantages for the girl child, e.g. in the family setting where priority is accorded to boys in relation to access to schooling. This is compounded by cultural practices, such as the persistent viewpoint in some societies that children are the chattels of the parents, and the apparent social acceptance of prostitution and pornography. There is the additional elusive factor of the customer's frame of mind; if this is conditioned by a psychological hang-up, surely punitive laws alone will not suffice to change that state of mind.

35. At the other end, there are criminal elements which seek to exploit children, ranging from procurers to syndicates, from unscrupulous employers to sub-contractors, from agents to profiteers, colluding with law enforcement officials at times. There are also those consumers and customers who fail to care about how they come to enjoy their products. The vicious cycle is aggravated by passivity - close our eyes and accept the fait accompli, especially if it is going to cost a lot of money to change all that. That which is a cause may become a consequence and vice versa.

36. If such is the dialectic, have the laws, policies and interventions taken a proactive approach rather than a reactive approach? A simple question may be posed, for example. While we have laws which seek to punish procurers, have we the laws to help the needy families in terms of socio-economic support so as to prevent them from selling the children into the flesh trade, or after having sold them, to take them back and reintegrate them into the family setting? If there are laws, are there policies, programmes and budgets? Or are the authorities more concerned about servicing the national debt in the face of international financial institutions? Are they more oriented to obtaining hard currency from tourism and export of products, irrespective of child exploitation? How much community participation is there in preventing and solving these problems?

37. From another angle, when we refer to cultural practices, it is obvious that laws alone will not suffice to overcome age-old beliefs. This entails a different socialization process with greater access to education and information. It requires imaginative use of the mass media and community involvement in questioning taboos and ingrained prejudices. These elements pinpoint the premise that if we are really to prevent or cure the problems of the sale of children, the strategies have to start from identification of the root causes, admission that the problems exist, and adoption of relevant long-term, multi-pronged action with budgetary commitment to deal with them. The causes did not arise in a day and they will not disappear overnight.

VI. INTERNATIONAL SCENARIO AND NATIONAL CONTEXT

A. International scenario

38. At this juncture, it is proposed to pose three basic questions concerning the international scenario:

(a) What is the legislative framework on the issue of sale of children, child prostitution and child pornography?

(b) Is there a policy framework and a programme of action with concomitant budgetary commitment?

(c) What are the catalysts which lead to action?

39. The first question posed gives rise to a large number of international treaties and statements on the subject. The latest in line, which reflects on the sale of children including adoption for commercial purposes, child prostitution and child pornography, is the Convention on the Rights of the Child itself. This is set against a backdrop of many treaties dating from the early part of this century including the various anti-slavery conventions, the conventions against the sale and trafficking of women (including the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others), the ILO's own conventions on minimum age for child labour and forced labour, and the 1923 International Convention for the Suppression of the Circulation of and the Traffic in Obscene Publications. These are not self-contained and should be placed in the setting of all the existing human rights instruments, including, inter alia, the 1948 Universal Declaration of Human Rights, the 1966 Covenants and the various conventions concerning women's rights, including regional initiatives.

40. It is not the intention of this preliminary report to examine these in detail for lack of space and time, but one should note that the legislative framework already exists. Interestingly, one may add that many of the international laws concerned take a "stick" approach of either regulating or prohibiting practices. Moreover, they tend to be targeted to the protection of the child and punishment of the exploiter.

41. The fact that there is such framework does not imply that it is free from loopholes. The shortcomings include the antiquated nature of some of the instruments, the paucity of accessions by States, and the lack of implementation by those which have acceded. It is also tempting to deduce that they do not explore the "carrots" that may also be required to change local practices, e.g. incentives in the form of development aid and assistance, and responsive industrialization. Moreover, they do not provide an adequate preventive approach to tackle the root causes enumerated above, e.g. which conventions seek to establish the broad social interventions required to help indigent families at large?

42. On the policy-making front, there are many policy statements and there is evidently a shift now to more preventive measures. This does not simply call into play child-targeted strategies, but also development concerns affecting other lives interwoven with the children, especially the family. It requires not only political will but also social will and long-term allocation of resources.

43. One of the most recent policy statements along this line was the Declaration and Programme of Action on Child Development adopted by the Heads of State at the World Summit for the Child in September 1990. The Programme of Action sets various targets to be attained in the next decade, such as the reduction of child mortality and the assistance needed for children in difficulties. More specifically within the setting of the United Nations human rights organs, the Working Group on Slavery's own programme of action on the sale of children takes into account both preventive and remedial strategies. The responses from States are now awaited in terms of provision of information requested by that programme. UNICEF's own initiatives at both the international and national levels are increasingly directed towards children in difficulties, including those of concern to this report.

44. Although the policy framework and related action have emerged, one of the perennial questions is how to sustain the initiative and how to network between the key catalysts. This has a financial implication, on the one hand, and it raises the call for collaboration between different States and agencies, on the other. The catalysts have to be broader than the various United Nations institutions that identify themselves as human rights organs. There is a key role for the world financial institutions such as the World Bank, the International Monetary Fund and the wide array of development agencies such as the United Nations Development Programme. One should not neglect also the other agencies that interrelate with the potential exploiters of children, e.g. if it is a question of sex tourism, the World Tourist Organization is a key catalyst in preventing abuses. This is closely linked with regional and bilateral aid agencies and programmes. These may help to provide the incentives that are required to change practices.

45. On the other side, there is the need for stricter law enforcement and related sanctions. This depends much upon action to identify the culprits and apprehend them. The role of law enforcement authorities, particularly INTERPOL, is important at the international level. INTERPOL now has a model crime prevention programme which has a bearing on child exploitation. It is also circulating a questionnaire to States to identify facts and figures on offences committed against minors. At the regional and bilateral levels, there is also much to be done. Interestingly, a recent bilateral initiative in Asia is the exhange of lists of paedophiles between countries so as to identify those who have been deported for malpractices against children.

46. The untiring work of the non-governmental organizations at the international level should be recognized as a key counterpart in all the matters mentioned. It is often through their initiatives that the United Nations system and States have taken up programmes and action, and it is through their monitoring that the pace for change is accelerated.

B. National context

47. The national context may also be tested by the yardsticks set by the three questions below:

(a) What is the legislative framework on the issue of sale of children, child prostitution and child pornography?

(b) Is there a policy framework and a programme of action with concomitant budgetary commitment?

(c) What are the catalysts which lead to action?

48. The first question gives rise to a self-evident reality: there are already many laws at the national level dealing with the issue concerned. However, they often suffer from poor law enforcement, such as insufficiency of labour inspectors and ineffective police. The laws tend to take a remedial approach rather than prevention (in terms of social subsidies to prevent the breakdown of families). They attempt to apply sanctions, but fail to explore sufficiently the question of incentives for change. Particularly in federal States, there is the problem of federal laws needing the co-operation of the composite states to execute legislation at the provincial level; the message is one that has to be carried through to the local people at the micro level. Regrettably, the strategies are frequently detached from the socio-economic setting, "wishing away" centuries-old practices that will not disappear without other interventions.

49. For this reason, when viewing the legislative framework, it is imperative to identify the policies, programmes and budgets that go hand in hand with the action needed to tackle the root causes. In many developing countries, there is a national economic and social development plan usually of five to six years' duration which has direct bearing on children's rights, especially as it affects budgetary allocations. Many countries also have specific child development plans, setting aims and targets. While the "will" emerging from these plans is laudable, effective implementation through action programmes interlinked with community participation needs further attention. In several countries most closely affected by the child exploitation problem, there is still a lack of subsidies for families and an absence of a family-oriented programme with long-term budgetary support. Ironically, the money spent on arms purchases and industrialization more often than not outweighs that spent on social development, particularly child and family development.

50. There is another message linked with the issue of catalysts: precisely because the problem of child exploitation is so vast, governmental initiatives alone will never suffice. This calls into play the role of non-governmental organizations and community groups, including children's groups and the mass media, as watchdogs for children's rights. While many governmental plans recognize the importance of such entities, the realities may differ. For instance, while investment incentives in terms of tax reductions are available for industrial groups, they are much less accessible to those entities involved in "social investment" including child related work. One recent example drawn from a developing country illustrates this point: while the authorities are willing to reduce tariffs for new cars imported for use by foreign investors investing big sums of money in the industrial sector in the country, they are not willing to exempt from such a tariff a child-related non-governmental organization wishing to import second hand cars (donated as gifts by friends in other countries) for use in rural development programmes.

51. On another front, there has been little exploration of collaboration with groups which may exert peer group pressure on potential abusers of children. In the case of child labour, have the industrial sector and the trade unions been approached to scrutinize those small scale factories that tend to use

child labour? Could that sector evolve its own voluntary code of conduct to protect children and issue "child-exploitation free certificates"? In the case of adoption, the traditional adoption agencies may need to broaden their work to cover the root causes that lead to child abandonment rather than concentrate on the adoption process alone. In the shadowy area of organ transplantation, to what extent has a dialogue with medical groups and associations been established? With regard to child prostitution and pornography, consumer groups should team up to advocate consumer responsibility towards children. The mass media should be questioning themselves on those advertisements and captions which may lead to child exploitation. And while we often identify the law enforcement authorities as colluding with vested interests, have we provided the good elements with incentives, such as better pay, in order to build more effective allies?

52. The range of catalysts is not exhaustive. A key premise for exploring their roles is not simply to advocate sanctions against transgressors but also to explore incentives which can promote the work of those seeking to help children and to encourage "borderline" cases to opt for child protection instead of child abuse.

VII. CONSIDERATIONS WITH REGARD TO ACTION

53. One of the underlying threads of this study is the premise that while laws can help, they alone do not suffice. We should thus explore the whole range of resources and personnel not merely in the legislative setting but also in the other arenas. The lessons are there to be learnt from many programmes existing at the field level which can help to translate aspirations into realities in a sustained inter-disciplinary context.

54. It is also this perspective that hampers the role of the Special Rapporteur in the preparation of the final report. Currently, most of the information to which he has access is in the form of documents and written submissions, often by means of hearsay evidence. To undertake the task of assessing the situation concretely, some field visits are required to various parts of the world (preferably on a balanced geographical basis) to learn of the various strategies and action being implemented by both the governmental and non-governmental sectors. Advice and assistance on this matter are most welcome.

55. On another front, it would be useful to collect further information on the various aspects posed above by means of a questionnaire circulated widely. This may be complemented by the holding of regional consultations to update information and interchange experiences.

56. In preparing an action-oriented report, some of the tenets emerging from the survey of the information available can be identified as follows:

(a) Prevention: particularly the need for preventive action against child exploitation in the form of satisfaction of basic needs, not only for the child but also for the family, correlative development assistance, and a redistribution process to redress social deprivations and malpractices;

(b) Protection: particularly the enactment and reform of laws and related policies to protect children's rights both at the national and international levels, in addition to better identification of the culprits and law enforcement;

(c) Remedies: particularly the improvement of access to legal and other remedies, bearing in mind that the formal legal institutions, such as judges, police and lawyers, need to be complemented by quasi-legal or non-formal institutions, such as village committees and Ombudsmen, which can help to safeguard children's interests at the grassroots level;

(d) Rehabilitation: particularly the need for counselling, medical, occupational and development facilities to help rehabilitate the victims of exploitation and provide alternative forms of livelihood;

(e) Intervention: particularly the building of a corps of responsive institutions and personnel, governmental and non-governmental, to intervene on behalf of the child and the family with concomitant budgetary allocations;

(f) Participation: particularly the recognition of more popular participation in the process of protecting children, ranging from access of ordinary people to the legislative process to implementation and evaluation of programmes;

(g) Dissemination: particularly the gathering of data, the education and teaching of children's rights, and the infusion of child protection as a pervasive cultural ethic;

(h) Collaboration: particularly the maximal use of existing entities at both the national and international levels to help protect children, collaborating with not only traditional human rights organs and child-targeted institutions but also others, such as financial and development agencies, and the private sector whose operations have implications for child and family development;

(i) Alternatives: particularly the search for not only legislative sanctions and disincentives against child exploitation but also social pressure and incentives for changes of habit and cultural norms so as to build a broader horizon of allies to help children.

57. Finally, it should be noted that while this report has not delved into concrete cases and allegations of abuses, the later report to be submitted will deal with these instances. This is very much dependent upon how the evidence is gathered from both governmental and non-governmental sources and presented to the Special Rapporteur during the year. As a corollary, there is a need to build a network of contacts and an information base at both the national and international levels to assist in the compilation process. A ramification of this process is the potential emergence of a pro-active role on the part of the Special Rapporteur: an urgent action procedure, based upon past experience in the United Nations system, may be evolved to accelerate action to help those who are the victims of exploitation.

VIII. CONCLUSIONS AND RECOMMENDATIONS

58. This preliminary report has endeavoured to provide an overview of key issues concerning the sale of children, child prostitution and child pornography. Definitional difficulties have been identified, and these will affect the parameters of the work undertaken. Tentatively, it is proposed that the following be examined in greater detail in the later report projected: adoption for commercial purposes, aspects of child labour, organ transplantation, child prostitution and child pornography. These will be supplemented by case profiles and concrete examples.

59. Although it may be premature to make conclusive recommendations at this point in time, some preliminary recommendations may be proffered.

60. The scope of the more detailed report to be submitted later by the Special Rapporteur is inevitably influenced by such realities as time, resources, information and credible evidence, particularly where there are allegations of abuses.

61. There is a need to build a network of contacts at both the national and international levels in the governmental and non-governmental sectors to establish an information base which may help in the gathering of data and proof concerning the issues mentioned. At this stage, an inventory of addresses is already being undertaken, and this should be expanded continually. Suggestions are invited from all sources.

62. While stock-taking of available documents is being carried out at present by the Special Rapporteur, it is evident that although information of a general nature is available, more substantial proof should be gathered concerning concrete cases. This is contingent upon the efforts of both the governmental and non-governmental sectors, including law-enforcement agencies, linking with the United Nations Centre for Human Rights and the Special Rapporteur.

63. The root causes of the phenomenon should be better appreciated as these will condition the types of responses required. Economic disparities, social deprivations, family disintegration, unadulterated consumerism and systematic exploitation are but some of the ostensible causes. In terms of countermeasures, far more than laws and regulations are required to prevent and eliminate these factors. Political and social will, programme-linked policies, development assistance, and budgetary commitment are but some of the inter-disciplinary requisites of a long-term nature.

64. The transnational aspects of the sale of children, child prostitution and child pornography call for more identification of not only multilateral initiatives but also regional and bilateral efforts to tackle the problem. More information concerning regional and bilateral arrangements is invited from the international community.

65. On the one hand, there is a need to collect information on local laws and law enforcement influencing the issues mentioned in an analytical perspective. On the other hand, it is imperative to go beyond the legal framework to identify the action scenario based upon the plethora of

interventions required to address the problem. These are interwoven with prevention, protection, remedies, and greater participation and collaboration by all sectors of the community.

66. To reflect these concerns, a questionnaire is being prepared to bridge the information lacuna. This will be circulated among relevant agencies and personnel, and an effective response to the questionnaire would be appreciated.

67. In order to become better acquainted with the issue of the sale of children, child prostitution and child pornography at the global level, visits to various parts of the world by the Special Rapporteur may be required, preferably on a balanced geographical basis. They will broaden the basis of contacts, and provide insight into the various initiatives to prevent and eliminate the problem at the national level. As well as these visits, regional consultations may be organized to create a momentum of interest and promote better networking.

68. Although a key role on the part of the Special Rapporteur is to build an information base which can be channeled to the United Nations and other concerned entities, an urgent action procedure to propel immediate action for needy cases may be evolved as a component of the tasks envisaged, based upon past practices in the United Nations system.

69. Greater collaboration should be sought not only with child-oriented strategies and agencies but also with others which condition the fate of children. These may include, inter alia, the parents, consumers, professional associations, the private sector, community organizations, law enforcement personnel, financial institutions and individuals at both the national and international levels. Tactics to deal with the potential and actual abusers require wider targeting in terms of prevention and cure.

70. Several of the obstacles identified in this preliminary report concern not only economic but also socio-cultural problems, such as ingrained attitudes against women, the image of children as the property of the parents and apparent acceptability of sexual exploitation in some communities. Laws alone will never suffice to change these shortcomings. The educational approach and the dissemination of key information to change attitudes and behaviour need greater encouragement not only in terms of political will but also of budgetary commitment and action.

71. While it is apparent that legal sanctions are now available to some extent against abuses through the national and international structures, the implementation process leaves much to be desired, thereby demanding greater commitment from relevant quarters. A related challenge is to explore not only the "sticks" to punish exploitive elements but also the "carrots" to encourage agencies and personnel to improve their performance.